Case referred to:—

(1) *Ng Eng Kang v. R. Sitharam* (1952) M.L.J. 155.

CIVIL REVISION.

R. D. Hume for the plaintiff.

H. E. P. Powell for the petitioner.

Spenser Wilkinson J. : — This was a claim by a landlord for possession of premises on the ground that the tenant was in arrears of rent.

The defendant did not appear at the hearing but applied through his Counsel for an adjournment which was refused. Counsel for the defendant being then without instructions withdrew from the case, which was, therefore, virtually undefended.

The plaintiff gave evidence in support of his claim and at the conclusion of his evidence the learned Magistrate made an order as prayed against the defendant and all persons claiming through or under him with costs.

One K. M. Noordin, alleging himself to be a sub-tenant, applied to the Court for revision on the ground that he was a lawful sub-tenant and that in any event he had not been given an opportunity of being heard and that, therefore, the order made by the learned Magistrate should not have applied to himself and the other sub-tenants. Upon this application I decided to exercise my powers of revision under Sections 53 and 55 of the Courts Ordinance, 1948.

Mr. Hume who appeared on the revision on behalf of the plaintiff informed me that the order made in this case by the learned Magistrate was the usual form of order in these cases. If this be so I am inclined to think that it is a form of order which should be discontinued. In the first place persons claiming through the defendant are not before the Court and I see no reason to mention them in the judgment. Secondly, I am inclined to doubt whether sub-tenants who claim the protection of the Control of Rent Ordinance can strictly be said to claim through the chief tenant, because their claim really rests upon the provisions of Section 14 of the Control of Rent Ordinance which in certain circumstances make them statutory tenants of the landlord when an order has been made for recovery of possession as against the chief tenant. However this may be, I do not think that this form of order is a compliance with the mandatory provisions of sub-section (1) of Section 14 which reads as follows:—

"14. (1) No judgment or order for recovery of possession shall be enforced as against sub-tenants (if any) of the tenant of the premises where the tenant was not prohibited from sub-letting by the terms of his tenancy; and every such judgment or order shall declare whether it may be enforced as against such sub-tenants or not."

It appears that on the 1st March, 1950 a fresh tenancy was granted to the chief tenant at an increased rental and that this new tenancy included a condition against sub-letting premises without the consent of the landlord. It is alleged, however, that some of the sub-tenants were in occupation prior to the inception of this new tenancy, and according to the decision of *Ng Eng Kang v. R. Sitharam*[1] in order to make the sub-letting unlawful the prohibition against sub-letting must have existed at the time of the sub-letting.

Moreover, in the judgment of the Court of Appeal in that case I find the following passage:—

"I think that the Court should not declare any judgment enforceable against sub-tenants unless it has reason to be satisfied that they are not entitled to protection. I do not see how any Court can be so satisfied without hearing them."

Following the decision in that case therefore I varied the order of the learned Magistrate by deleting therefrom the words:—

"and all persons claiming through or under them"

and remitted the case to the Magistrate's Court for the sub-tenants to be heard upon the question of whether or not the judgment should be declared to be enforceable against them or not.

Order accordingly.

Solicitors: *Hogan, Adams & Allan; H. E. P. Powell & Co.*

LEE CHENG v. LAM WAN THIN & ORS.

[A. C. J. (Abbott J.) May 17, 1954]

[Seremban — Civil Appeal No. 3 of 1954]

Workmen's Compensation — Worker having to cross and re-cross river in course of employment in felling timber — Two methods of crossing provided, one becoming useless due to flood — Second means of crossing not available when workman became entitled to proceed to his home — Workman taking only route ready at hand and available to him to return — Employer liable to compensate for worker's loss of life.

In this appeal, the deceased, together with 5 other labourers, were employed by the appellant to fell timber on the other side of a river. In order to reach the place where the timber was to be felled the labourers had to cross the river and to re-cross it when their day's work was finished. Two methods of crossing were provided: by means of a tree which had been felled so as to make a bridge and a boat. On the day in question the river was in flood and the felled tree was useless for its purpose. The deceased and his fellow-workmen had finished their day's work and the time had come for them to cross the river in order to proceed to their homes. The boat was not available at the time when the labourers wished to cross to the other bank. The deceased and one

other labourer decided not to wait for the boat but to cross the river by hauling themselves through the water by means of a wire rope which had been stretched across the river and which was used for transporting the felled timber from one bank to the other. The other labourer succeeded in getting to the opposite bank, but the deceased lost his grip of the wire rope, became overwhelmed by the current running at the time and was drowned.

The Commissioner for Workmen's Compensation awarded $3,200 to the deceased's widow and minor children against the appellant.

It was argued for the appellant that the deceased's death was brought about by his own foolhardy act and that his employer, having provided a safe means of crossing the river by boat, was not liable to pay compensation.

Held: the deceased's action was neither a foolhardy risk nor a highly dangerous course to adopt. The appellant had not, at the time there was need, provided any other means of crossing the river, and the compensation was rightly awarded.

WORKMEN'S COMPENSATION APPEAL.

Ernest Jeff for the appellant.

M. R. Naidu (Deputy Commissioner for Labour) for the respondents.

Cur. Adv. Vult.

Abbott J. : — This is an appeal from the Court of the Commissioner for Workmen's Compensation at Seremban.

A certain Cheng Kai Seng, hereinafter called the deceased, was employed, together with five other labourers, by the appellant to fell timber on the other side of a river being about 130 feet wide. In order to reach the place where the timber was to be felled the labourers had to cross the river and to re-cross it when their day's work was finished. The appellant had provided two methods of crossing the river, namely, by means of a tree which had been felled so as to make a bridge and a boat. At the material time the river was in flood and the felled tree was useless for its purpose by reason that it was totally submerged. On the day in question the deceased and his fellow-workmen had finished their day's work and the time had come for them to cross the river in order to proceed to their homes. The boat was on the far side of the river and they were unable to use it. The boat was in charge of another of the appellant's employees and he was not there at the time when the labourers wished to cross over to the other bank. It is true to say that they were expecting the man to come. The deceased and one other labourer appeared to have decided not to wait for the boatman but to cross the river. A wire rope had been stretched across the river and was used for transporting the felled timber from one bank to the other for eventual removal — the deceased and another labourer decided to cross the river by hauling themselves through the water by means of the wire rope. The other labourer proceeded first and succeeded in getting to the opposite bank. The deceased followed and it appears that he lost his grip of the wire rope, became overwhelmed by the current running at the time and was drowned.

The deceased's widow and four minor children laid a claim under the Workmen's Compensation Enactment (Cap. 155) and the learned Commissioner, having heard the evidence decided that the accident took place arising out of and in the course of the deceased's employment. A sum of $3,200 was awarded to the applicants against the appellant.

In this Court it was argued on the part of the appellant that the deceased's death was brought about by his own foolhardy act and that his employer, having provided a safe means of crossing the river by boat, is not liable to pay compensation. It was not argued, and rightly, that, because the deceased's work had been finished for the day, he was no longer in the employment of the appellant.

The sole issue is as to whether or not the deceased met his death by engaging in a foolhardy hazard or a hazard contrary to the instructions of his employer or contrary to such instructions as a prudent employer would have given him. I repeat that the boat was not available to the deceased and since he was entitled to proceed to his home he took the only route which was then ready at hand and available to him to return. The other labourer had safely proceeded by that means and the deceased apparently had no reason to suppose that he might have been unsuccessful in crossing the river. It does not appear to me to have been either a foolhardy risk or a highly dangerous course to adopt. The fact that he lost his grip on the wire rope was fortuitous. It cannot be said that the appellant had, at the time that there was need, provided any other means of crossing the river and I am therefore of the opinion that compensation was rightly awarded and the appeal therefore must be dismissed.

Appeal dismissed.

LEE IT LEO v. REGINA

[A. Cr. J. (Whitton J.) October 12, 1954]

[Singapore — Magistrate's Appeal No. 141 of 1954]

Common Gaming Houses Ordinance (Cap. 30), ss. 4(c) & 12 — Assisting in the carrying on of a public lottery — Chap Ji Ki schedules found in packet dropped by accused — Search warrant issued by Justice of the Peace — Description of person in search warrant — History of exhibits, etc. — Prosecution eye-witness giving expert evidence.